

Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 L-03 OPR-02 CU-02 AID-05 /023 W

----- 114397

R 210740Z SEP 76

FM AMEMBASSY AMMAN

TO SECSTATE WASHDC 9101

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NEA/ARN PASS AMBASSADOR PICKERING

A/OS FOR DR MANNINO, L FOR BURMAN

E.O. 11652 N/A

TAGS: AFSP ASCH ACLM

SUBJECT: AMERICAN COMMUNITY SCHOOL

REF: (A) BURMAN-SUDDARTH TELECON (B) AMMAN 4764

1. THIS CABLE RESPONDS TO REQUESTS FOR INFORMATION PER
REF TELECON.

2. EMBASSY AND LEGAL ADVISOR ARE BOTH UNABLE TO ASSERT
THAT WE HAVE REASONABLY GOOD CHANCE OF WINNING AMERICAN
COMMUNITY SCHOOL CASE. FURTHER DESCRIPTION OF MERITS
(AS WELL AS DESCRIPTION OF CIVIL PROCEDURES) IN THIS
CASE BEING FORWARDED TO L/MR BURMAN BY POUCH, BUT
BECAUSE OF TIME FACTOR WE PROVIDE FOLLOWING SUMMARY.

PLAINTIFFS ARE POWERFUL AND WEALTHY ASFOUR FAMILY WITH
ENORMOUS INFLUENCE IN COMMUNITY AND IN ABILITY TO
ENGAGE BEST LEGAL TALENT AND TO PURUSE LEGAL
MATTER FOR YEARS. UNPRECEDENTED RISE IN LAND
VALUES IN RECENT YEARS IN NOW PROVIDING INCENTIVE
TO TEST THE LAND LAW IN AREAS NOT PREVIOUSLY
EXPLORED. LEGAL ASPECTS IS EXTREMELY COMPLICATED AND
IT IS DIFFICULT TO PREDICT COURTS RULINGS WITH
CERTAINLY ON SUCH A CASE IN ADVANCE.

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IN PARTICULAR THERE IS RECENTLY DISCOVERED 1953 LAW WHICH LIMITS THE RIGHT OF (NON GOVERNMENTAL) "FOREIGN PERSON" TO RENT PROPERTY BEYOND THREE YEARS WITHOUT APPROVAL OF COUNCIL OF MINISTERS ON WHICH LEGAL ADVISOR BELIEVES SCHOOL WOULD BE VULNERABLE UNLESS COUNCIL OF MINISTERS APPROVAL IS OBTAINED OR SOVEREIGN IMMUNITY IS ASSERTED.

3. EMBASSY BELIEVES CURRENT LEGAL ADVISOR WHO IS ELDERLY SEMI RETIRED JUDGE, IS PROBABLY NOT ABLE TO HANDLE LITIGATION WITHOUT ASSISTANCE PARTICULARLY IN LIGHT OF HIGH POWERED LEGAL ASSISTANCE PLAINTIFFS ARE EMPLOYING. HIS BIO DATA PLUS THAT OF OTHER RECOMMENDED ATTORNEYS FEE SCHEDULES AND STATEMENTS OF BASIC ISSUES ON CASE BEING POUCHED.

4. WE SEE FOLLOWING OPTIONS IN THIS CASE:

(1) LITIGATE WITH POSSIBILITY WE WOULD LOSE CASE AND THEREBY FACE EVICTION OR EXTREMELY COSTLY INCREASE IN RENT OR SALE VALUE OUT OF COURT SETTLEMENT.

(2) ATTEMPT TO OBTAIN INTERCESSION OF HIGH LEVELS OF GOJ WITH PLAINTIFFS TO OBTAIN AN ACCEPTABLE SETTLEMENT. IF DIFFICULT TO PREDICT GOJ POSITION ON THIS ISSUE ALTHOUGH AMBASSADOR PICKERING MAY HAVE FIRMER JUDGEMENT THAN EMBASSY.

(3) ASSERT OR THREATEN TO ASSERT SOVEREIGN IMMUNITY PROBABLY COUPLED WITH AN OFFER TO RE NEGOTIATE A VIABLE LONG TERM ARRANGEMENT WITH LANDLORD.

IN FINAL ANALYSIS WE HOPE EVENTUALLY TO NEGOTIATE A SETTLEMENT WITH LANDLORDS IN CONNECTION WITH LONGER TERM EXPLANATION OF SCHOOL REQUIRED BY GROWING SCHOOL POPULATION. WE FEAR HOWEVER THAT WE CANNOT COME TO SETTLEMENT ANYWHERE NEAR OUR FINANCIAL MEANS AS LONG AS LANDLORD HAS THREAT OF EVICTION UNDER LEGAL JUDGEMENT HELD OVER OUR HEADS.
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5. BOTH WE AND EMBASSY LEGAL ADVISOR BELIEVE A GOOD CASE CAN BE MADE FOR ASSERTION OF SOVEREIGN IMMUNITY FOR THE SCHOOL AS AN INSTRUMENTALITY OF THE USG. THE SCHOOL WAS ESTABLISHED IN 1964 UNDER THE AUSPICES OF THE EMBASSY. THE COST OF THE LAND CONSTRUCTION. AND TECHNICAL FEES WAS FINANCED WITH A GRANT TO THE SCHOOL FROM AID. WITH THESE FUNDS

THE SCHOOL ENTERED INTO A LEASE AGREEMENT FOR THE LAND AND BUILDING WITH THE ASFOURS WHO DID NOT ORIGINALLY OWN THE LAND. THIS AID FINANCING WAS CONSIDERED TO BE RENT FOR THE FIRST TEN YEARS, EFFECTIVE FROM THE DATE OF COMPLETION AND DELIVERY ON OCT 15, 1965. THE LEASE WAS RENEWABLE AT THE OPTION OF THE LEASEE AT THE END OF A TEN YEAR PERIOD.

6. PRESUMABLY BECAUSE THE SCHOOL WAS CONSIDERED ATTACHED IN SOME WAY TO THE EMBASSY NO APPLICATION WAS MADE AS A FOREIGN BUT NON GOVERNMENTAL ENTITY FOR PERMISSION OF THE COUNCIL OF MINISTERS TO LEASE REAL ESTATE IN JORDAN FOR MORE THAN THREE YEARS AS REQUIRED BY JORDANIAN LAW. NOR DID OTHER FOREIGN ENTITIES MAKE SUCH AN APPLICATION SO FAR AS WE KNOW. THE GOJ HAS ALWAYS CONSIDERED THE SCHOOL PART OF THE EMBASSY AND HAVE GRANTED IT DUTY FREE IMPORT PRIVILEGES, AND EXEMPTED IT FROM OTHER TAXES ON THIS GROUND. IF BY

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PERMITTING THIS CASE TO GO TO COURT WE MIGHT CAUSE THE JORDANIANS TO QUESTION THE QUASI/OFFICIAL USG STATUS OF THE SCHOOL STEMMING FROM ITS EMBASSY RELATIONSHIP, AND RUN THE SERIOUS RISK OF HAVING THE ORIGINAL AGREEMENT DECLARED NULL AND VOID FOR NEVER HAVING BEEN GRANTED PERMISSION TO LEASE. TAX PRIVILEGES CURRENTLY ENJOYED BY THE SCHOOL MAY BE IN JEOPARDY AND ITS RIGHT TO THEM IN THE PAST ALSO PUT IN QUESTION.

7. WE BELIEVE GOJ WOULD AGREE WITH OUR ASSERTION

OF IMMUNITY FOR SCHOOL AS AN INSTRUMENTALITY OF EMBASSY/USG SINCE THEY HAVE CONSIDERED IT SUCH FROM ITS BEGINNING. PREDOMINANT USG CHARACTER IS ALSO LIELY TO REMAIN THAT WAY FOR FORESEEABLE FUTURE SINCE ADDITIONAL CONSTRUCTION FOR SCHOOL WILL BE REQUIRED CHIEFLY TO ACCOMMODATE STUDENT BODY INCREASE COMING FROM DEPENDENT PERSONNEL RELATED TO USG PROGRAMS: PARTICULARLY LARGE NUMBER OF US MILITARY AND CIVILIAN CONTRACTOR PERSONNEL BEING ASSIGNED TO JORDAN TO ESTABLISH AIR DEFENSE SYSTEM AND SECONDARILY FOR INCREASE IN USAID OFFICIALS AND CONTRACTORS HERE PURSUANT TO NEW USAID PROJECTS.

8. FOR THESE REASONS WE FEEL BEST COURSE IS TO PERMIT LEGAL ADVISOR TO ASSERT SOVEREIGN IMMUNITY AND WE URGE THE DEPARTMENT TO SUPPORT THIS APPROACH WITH JUSTICE DEPARTMENT. WE ARE PREPARING THE MATERIAL REQUESTED IN TELECON AND IT SHOULD BE READY LIMITED OFFICIAL USE

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FOR THE POUCH IN A FEW DAYS. HOWEVER GIVEN THE NUMBER OF DOCUMENTS INVOLVED AND THE COMPLEXITY OF ALL THESE ISSUES WE BELIEVE IT PREFERABLE FOR US TO SEND A REPRESENTATIVE TO AMMAN TO REVIEW THE MATERIAL. DISCUSSION WITH PERSONS HERE ARE PROBABLY ESSENTIAL TO ADEQUATELY UNDERSTANDING THE CASE. THE DEPARTMENT WOULD THEN BE IN A BETTER POSITION TO DISCUSS WITH THE JUSTICE DEPARTMENT AND OF EQUAL IMPORTANCE WE WOULD GAIN CONSIDERABLE TIME IF THE ACS IS TO EXPAND TO ACCOMMODATE THE NEW STUDENTS ASSOCIATED WITH THE MISSILE PROGRAM IT MUST MOVE QUICKLY. ALSO FROM A PUBLIC RELATIONS STANDPOINT WE WISH TO RESOLVE THIS MATTER AS QUICKLY AS POSSIBLE.

9. REQUEST THIS MESSAGE BE DISCUSSED WITH AMBASSADOR PICKERING DURING HIS CONSULTATION STARTING SEPT 24 PERHAPS TDY ASSISTANCE WOULD BE AVAILABLE INTIME TO DISCUSS WITH THE AMBASSADOR SHORTLY AFTER HIS ARRIVAL IN AMMAN. COURT HAS NOW SET HEARING FOR OCT 5 ALTHOUGH OUR LEGAL COUNCIL ASSURES US THAT EXTENSION OF 2 TO 4 WEEKS WILL PROBABLY BE GRANTED UPON OUR REQUEST. WE HAVE CAUTIONED OUR COUNSEL NOT TO ACCEPT SERVICE OF COURT SUMMONS ON EMBASSY OR ACS BEHALF WITHOUT PRIOR AUTHORIZATION. SUDDARTH

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